

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Clarence E., Jr. & Regina K. Cross)
Dist. 1, Map 131, Control Map 131, Parcel 19.01) Morgan County
Residential Property)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$13,700 | \$166,400 | \$180,100 | \$45,025 |

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 29, 2007 in Wartburg, Tennessee. The taxpayers, Clarence and Regina Cross, represented themselves. The assessor of property, Gilford Wilson, represented himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence constructed in 1994 located at 382 Cedar Ridge Road in Oliver Springs, Tennessee.

The taxpayers contended that subject property should be valued at \$151,000. In support of this position, the taxpayers testified that a hail storm damaged their metal roof in 1995 causing dents and a few holes which were patched. The taxpayers maintained that the roof needs to be replaced. The taxpayers appended to their appeal form an estimate from a local roofing company indicating it would cost \$34,610 to replace the roof. The taxpayers asserted that the assessor's current appraisal of subject property should be reduced to account for most of the cost associated with replacing the roof.

The assessor contended that subject property should remain valued at \$180,100. In support of this position, Mr. Wilson essentially argued that the roof is a maintenance item effectively considered by allowing 15% depreciation based upon the age of subject home. In addition, Mr. Wilson testified that a local roofer he spoke with estimated the cost to replace the roof at only \$15,000. Mr. Wilson maintained that subject property would command the current appraised value of \$180,100 if offered for sale on the open market in its present condition.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic

and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$181,100 based upon the presumption of correctness attaching to the decision of the Morgan County Board of Equalization.

Since the taxpayer is appealing from the determination of the Morgan County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2006 constitutes the relevant issue.¹ Respectfully, the administrative judge finds that the taxpayers introduced insufficient evidence to establish subject property's fair market value.

As noted by the Assessment Appeals Commission in *E. B. Kissell, Jr.* (Shelby Co., Tax Years 1991 and 1992), "[t]he best evidence of the present value of a residential property is generally sales of properties comparable to the subject. . ." Final Decision and Order at 2. The administrative judge finds that the taxpayers did not introduce any comparable sales into evidence.

The administrative judge finds the Assessment Appeals Commission has previously ruled that the methodology proposed by the taxpayers cannot provide a basis of valuation. For example, in *Thomas J. & Jennifer A. Robinson* (Davidson Co., Tax Years 2004-2005) the Commission rejected a similar argument reasoning in pertinent part as follows:

The subject property is a home at 18 Compton Trace in Nashville. The Robinsons purchased the home in 2002 for \$500,000, and later discovered two serious problems, flooding that rendered the finished bottom floor uninhabitable, and a boundary on one side diminished from their original understanding, with the result that a neighbor constructed a fence that closes access to the rear of the house from the front driveway. Based on estimates of the cost to cure these problems, the Robinsons argue the assessor's value should be reduced by at least \$100,000.

Mr. Ward testified that his analysis of the market supports a value of \$647,200, and therefore the present appraised value on the assessor's books (\$500,000) already more than takes into account the problems cited by the Robinsons. This analysis was un rebutted. Accepting the Robinson's contention regarding the cost to cure the cited problems, we are still left with the problem of determining what the property would sell for as of January 1, 2004 with the problems corrected. *It is this value, rather than the current appraisal on the assessor's books, from which we*

¹ January 1, 2006 is the relevant date of valuation pursuant to Tenn. Code Ann. § 67-5-504(a).

would deduct the cost to cure problems. Otherwise we must accept the possibility advanced by the assessor, that the current appraisal adequately accounts for the flooding and boundary/access problem.

[Emphasis supplied]

Final Decision and Order at 1.

The administrative judge finds other rulings issued by the Assessment Appeals Commission make clear that a taxpayer must do more than simply argue that the value on the property record should be reduced to account for a particular problem. For example, in *John C. & Betty J. Mather* (Jefferson County, Tax Year 2005) the Commission ruled in relevant part as follows:

Under applicable rules, the party appealing from the initial decision and order bears the burden of proving that the decision was in error. In this case, Mr. Mather must prove that the current appraised value on assessor's books, or the value arrived at by the administrative judge, exceeds the fair market value of his property. Respectfully, Mr. Mather has not offered proof of the fair market of his property. He has offered a detailed and mathematically rigorous analysis of reasons why his property may be worth less than others, but to order a change in the assessor's value, we need more. Deducting from the assessor's value assumes the assessor has not already taken into account the condition of Mr. Mather's home or the topography of his land, and we cannot assume that.

Final Decision and Order at 1. See also, *Devere M. Foxworth* (Polk Co., Tax Year 2001) wherein the Commission reached a similar conclusion reasoning as follows:

The problem with evaluating a property tax assessment on the basis of the pieces of the assessor's record is at least two-fold. First, the pieces may not compare one to another, i.e., the value attributed by the CAAS system to a typical component as represented in the subject property. Second, the pieces are part of a whole that is merely a computer generated approximation of the legal standard of fair market value. The result for a particular property in the assessor's system may or may not yield fair market value. The appeal process therefore looks to more traditional methods of individual property valuation in order to be sure the legal standard has been met.

Final Decision and Order at 1.

The administrative judge finds that the foregoing is compounded by the fact the taxpayers introduced insufficient evidence to establish that the roof must be replaced or the associated cost. The administrative judge finds that the roofer who prepared the \$34,610 estimate was not present to testify or undergo cross-examination. Moreover, the administrative judge finds that although Mr. Wilson's \$15,000 estimate constitutes unsubstantiated hearsay, his testimony indicates a genuine issue exists concerning the cost to replace the roof assuming replacement is truly necessary.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$13,700 | \$166,400 | \$180,100 | \$45,025 |


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 5th day of April, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Clarence E., Jr. & Regina K. Cross
Mr. Gilford Wilson, Assessor of Property